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Meenaxi Enterprise, Inc.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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MEENAXI ENTERPRISE, INC.,

Plaintiff,

**COMPLAINT**

v.

SZERMAN INC.,

**JURY TRIAL DEMANDED**

Defendant.

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Plaintiff Meenaxi Enterprise, Inc. (“Meenaxi”), having an address at 86 Executive Avenue, Edison, New Jersey 08817, by and through its undersigned attorneys, as and for its Complaint in this action against Defendant Szerman Inc., having an address at 6 Sapphire Road, Robbinsville, New Jersey 08619, alleges as follows:

**NATURE OF THE ACTION**

1. Meenaxi brings this action for trademark counterfeiting, trademark infringement, false designation of origin and unfair competition, importation of infringing goods and contributory trademark infringement under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, the Tariff Act of 1930, 19 U.S.C. § 1526(a), and corresponding state law, to halt Defendant’s unauthorized

importation of BOURNVITA chocolate milk powder from India, in violation of Meenaxi's exclusive U.S. rights in its registered BOURNVITA trademark.

### **PARTIES**

2. Plaintiff Meenaxi is a New Jersey corporation with its principal place of business at 86 Executive Avenue, Edison, New Jersey 08817. Meenaxi is engaged in the creation, research and development, refinement, production, marketing, importation and sale of a wide variety of food products and commodities, which are distributed primarily to Indian grocery stores in the United States.

3. Upon information and belief, Defendant Szerman Inc. ("Szerman") is a New Jersey corporation with a principal place of business at 6 Saphire Road, Robbinsville, New Jersey 08619.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 and 1367, and pursuant to principles of supplemental jurisdiction.

5. The Court has personal jurisdiction over Szerman because it is a New Jersey corporation.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c).

### **FACTUAL BACKGROUND**

#### **Meenaxi's Federally Registered BOURNVITA Trademark**

7. Since at least as early as 2008, Meenaxi has used the BOURNVITA mark for chocolate powder and other related goods, including, without limitation, chocolate milk, milk-based beverages with chocolate, powdered milk, and chocolate-based and cocoa-based

beverages.

8. Meenaxi owns a federal registration (Reg. No. 4,206,026) for the BOURNVITA mark for “beverages having a milk base; chocolate milk; dried milk powder; milk beverages containing fruits; milk drinks containing fruits; milk powder; milk-based beverages with chocolate; milk-based beverages with high milk content; nut-based milk; powdered milk; and strawberry milk” in International Class 29, and for “chocolate powder; chocolate-based beverages; chocolate-based beverages with milk; cocoa; cocoa beverages with milk; cocoa-based beverages; and cocoa-based condiments and seasonings for food and drink” in International Class 30.

9. Meenaxi’s registration for its BOURNVITA mark, which was applied for on February 11, 2012 and was issued by the United States Patent and Trademark Office (“USPTO”) on September 11, 2012, is valid, subsisting, and in full force and effect and it has become incontestable.

10. Meenaxi has invested significant time, money, labor and other efforts in developing and using its BOURNVITA mark, which acts as a distinctive source identifier associated with Meenaxi’s goods sold in the United States under that designation.

11. As a result of Meenaxi’s extensive and continuous use of the BOURNVITA mark over many years, Meenaxi has developed substantial public recognition and built up a reputation for excellence and high quality in the BOURNVITA mark, which symbolizes an enormously valuable goodwill.

### **Defendant’s Unlawful Conduct**

12. In violation of Meenaxi’s exclusive United States rights in its BOURNVITA mark, Szerman has imported into the United States BOURNVITA branded chocolate milk

powder produced in India for further distribution through its related company, Shakti Group USA LLC (“Shakti”), primarily to Indian groceries, without Meenaxi’s authorization.

13. Upon information and belief, Szerman and Shakti have the same owner, Prathik Patel, who is an officer of both entities. Szerman and Shakti also share the same address as their principal place of business.

14. Upon information and belief, Szerman’s BOURNVITA products originate out of India and also bear the Cadbury designation owned by the international conglomerate, Mondelez International, which is unrelated in any way to, and has no business relationship with, Meenaxi.

15. Although the Cadbury company owned by Mondelez owns the BOURNVITA trademark in India, it has no rights to that mark in the United States market in which the unrelated entity Meenaxi owns an incontestable registration granting it exclusive rights to the BOURNVITA trademark.

16. Indeed, on November 15, 2022, the International Trade Commission found that the importation of Cadbury’s BOURNVITA product was unlawful, and it issued a General Exclusionary Order prohibiting the entry into the U.S. of such infringing goods that violated Meenaxi’s trademark rights.

17. Upon information and belief, Szerman is actively engaged in the importation of Cadbury’s BOURNVITA product for the purpose of supplying Shakti with such products for Shakti to sell in the United States.

18. Upon information and belief, Szerman is fully aware of Meenaxi’s superior United States trademark rights in the BOURNVITA mark, but has nevertheless deliberately and systematically ignored those rights by importing products from India that it knows it has no right to sell in the United States market. Indeed, Szerman’s affiliate, Shakti, attempted to register the

BOURNVITA mark in the United States, but registration was refused by the USPTO because of Meenaxi's prior registration of the BOURNVITA mark.

19. Szerman is using the identical BOURNVITA mark owned and registered by Meenaxi in connection with the importation of the same kind of chocolate milk powder products sold by Meenaxi and covered by its federal registration, with the intended purpose of permitting such goods to be sold and distributed by Shakti. Such use is being made without the authorization of Meenaxi, the United States trademark owner of the BOURNVITA mark.

20. The BOURNVITA branded products being imported by Szerman are being sold in the same channels of trade in which Meenaxi's BOURNVITA branded products are sold, targeting the same Indian groceries and the same class of consumers who regularly shop in such stores.

21. Upon information and belief, by virtue of its unlawful conduct, Szerman has made or will make substantial profits and gains to which it is not in law or equity entitled.

22. Szerman's activities will inevitably result in a likelihood of confusion, mistake or deception among members of the consuming public in the United States. Such activities have caused, and will continue to cause, irreparable injury to Meenaxi, and have also resulted in damages suffered by Meenaxi from Szerman's infringing use.

23. Unless enjoined, Szerman's actions will cause further confusion, mistake and deception among consumers, injure the goodwill associated with the BOURNVITA mark and cause Meenaxi to suffer additional damages and otherwise cause irreparable injury to Meenaxi.

24. Meenaxi has no adequate remedy at law.

**FIRST CLAIM FOR RELIEF**  
**(Trademark Counterfeiting Under Section 32 of the Lanham Act)**

25. Meenaxi repeats and realleges the allegations set forth in paragraphs 1-24 above

with the same force and effect as if set forth fully herein.

26. Szerman has used a spurious designation that is identical with, or substantially indistinguishable from, the BOURNVITA trademark for which Meenaxi owns a federal trademark registration. Szerman has used this spurious designation in commerce in connection with the intended advertising, sale, offering for sale and/or distribution of infringing BOURNVITA products for its own financial gain. Meenaxi has not authorized such use of the BOURNVITA mark by Szerman.

27. Upon information and belief, at all relevant times, Szerman had actual and direct knowledge of Meenaxi's prior use and ownership in the United States of the BOURNVITA trademark. Szerman's conduct is thus willful and reflects its intent to exploit the goodwill and brand recognition associated with Meenaxi's BOURNVITA trademark.

28. Szerman's acts as described herein constitute trademark counterfeiting in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

**SECOND CLAIM FOR RELIEF**  
**(Trademark Infringement Under Section 32 of the Lanham Act)**

29. Meenaxi repeats and realleges the allegations set forth in paragraphs 1-28 above with the same force and effect as if set forth fully herein.

30. Szerman's importation and transportation of products in the United States using Meenaxi's federally registered BOURNVITA mark in connection with the intended advertising, sale, offering for sale and/or distribution of such products in the United States constitutes infringement of a registered trademark in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

**THIRD CLAIM FOR RELIEF**  
**(False Designation of Origin Under Section 43(a) of the Lanham Act)**

31. Meenaxi repeats and realleges the allegations set forth in paragraphs 1-30 above with the same force and effect as if set forth fully herein.

32. Szerman's importation and transportation of products in the United States using Meenaxi's BOURNVITA mark in connection with the intended advertising, sale, offering for sale and/or distribution of such products in the United States constitutes use of a false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

**FOURTH CLAIM FOR RELIEF**  
**(Importation of Infringing Goods Under Section 42 of the Lanham Act)**

33. Meenaxi repeats and realleges the allegations set forth in paragraphs 1-32 above with the same force and effect as if set forth fully herein.

34. Szerman's importation of goods copying or simulating the BOURNVITA trademark owned and registered in the United States by Meenaxi constitutes illegal importation of goods bearing an infringing mark in violation of section 42 of the Lanham Act, 15 U.S.C. § 1124.

**FIFTH CLAIM FOR RELIEF**  
**(Unlawful Importation Under Section 562(a) of the Tariff Act of 1930)**

35. Meenaxi repeats and realleges the allegations set forth in paragraphs 1-34 above with the same force and effect as if set forth fully herein.

36. Szerman's importation of goods bearing the BOURNVITA trademark owned and registered in the United States by Meenaxi constitutes unlawful importation in violation of section 562(a) of the Tariff Act of 1930, 19 U.S.C. § 1526.

**SIXTH CLAIM FOR RELIEF**  
**(Contributory Trademark Infringement)**

37. Meenaxi repeats and realleges the allegations set forth in paragraphs 1-36 above with the same force and effect as if set forth fully herein.

38. Szerman has supplied infringing goods bearing the BOURNVITA trademark to Shakti in order for Shakti to sell and distribute such goods in the United States. Szerman supplied such infringing goods to Shakti with knowledge of Shakti's direct infringement of Meenaxi's BOURNVITA mark through Shakti's sale and distribution of the BOURNVITA branded goods.

39. Szerman's actions as described above constitute contributory trademark infringement.

**SEVENTH CLAIM FOR RELIEF**  
**(Unfair Competition Under N.J. Stat. Ann. § 56:4-1 *et seq.*)**

40. Meenaxi repeats and realleges the allegations set forth in paragraphs 1-39 above with the same force and effect as if set forth fully herein.

41. Szerman's use of the BOURNVITA mark as described above constitutes unfair competition and unfair trade practices in violation of N.J. Stat. Ann. § 56:4-1 *et seq.*

**EIGHTH CLAIM FOR RELIEF**  
**(Common Law Unfair Competition)**

42. Meenaxi repeats and realleges the allegations set forth in paragraphs 1-41 above with the same force and effect as if set forth fully herein.

43. Szerman's use of the BOURNVITA mark as described above constitutes unfair competition in violation of the common law of the State of New Jersey.



**JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38(b), Meenaxi hereby demands a jury trial on all issues triable by a jury.

WHEREFORE, Meenaxi respectfully requests that judgment be entered as follows:

1. Szerman, its officers, agents, servants, employees, representatives, parents, subsidiaries, affiliates, divisions, successors and assigns and all those persons or entities in active concert or participation with any of them who receive actual notice of the injunctive order, shall be preliminarily and permanently enjoined from:

- (a) Using the BOURNVITA trademark or any other reproduction, counterfeit, copy or colorable imitation thereof in connection with the promotion, advertisement, display, sale, offer for sale, manufacture, production distribution or importation of any goods or services;
- (b) Engaging in any course of conduct likely to cause confusion, deception or mistake, or to injure Meenaxi's business reputation or goodwill in its BOURNVITA mark, including through the continued importation, advertising, sale, offering for sale and/or distribution of counterfeit BOURNVITA products;
- (c) Committing any other act calculated or likely to cause the public to believe that any products manufactured, distributed, or sold by Szerman are in any manner associated or connected with Meenaxi, or are sold, manufactured, licensed, sponsored, approved, or authorized by Meenaxi;
- (d) Destroying, altering, removing, or otherwise dealing with the infringing BOURNVITA products or any books or records which contain any information relating to the importation, manufacture, production, distribution, circulation, sale,

marketing, offer for sale, advertising, promotion, rental or display of unauthorized products which infringe Meenaxi's BOURNVITA trademark; and

(e) Effecting assignments or transfers, forming new entities or associations, or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in subparagraphs (a) through (d) above.

2. Pursuant to 15 U.S.C. § 1118, Szerman shall deliver up for destruction to Meenaxi all material, including, without limitation, all products, advertisements, promotional materials, packaging, catalogs, brochures, signs or displays, within their possession, custody or control, bearing the BOURNVITA trademark, or any simulation, reproduction, counterfeit, copy or colorable imitation thereof, and all plates, molds, matrices, and other means of production of same.

3. Pursuant to 15 U.S.C. § 1116(1), Szerman shall file with the Court and serve upon Meenaxi, within thirty (30) days after entry of final judgment, a report in writing and under oath setting forth in detail the manner in which it has complied with the provisions set forth in paragraphs 1 and 2 above.

4. An award shall be entered granting Meenaxi; (a) damages suffered by Meenaxi, trebled, pursuant to 15 U.S.C. § 1117(b); or, in the alternative, (b) all profits derived by Szerman from its use of counterfeits and/or infringements of the BOURNVITA trademark, trebled, pursuant to 15 U.S.C. § 1117(b); or, in the alternative, (c) statutory damages, pursuant to 15 U.S.C. § 1117(c), of up to \$2,000,000 for each trademark that Szerman has counterfeited and/or infringed, as well as attorneys' fees and costs; and (d) an award of Meenaxi's costs and attorneys' fees; and (e) profits and damages to the full extent provided by N.J. Stat. Ann. § 56:4-

2, trebled, and New Jersey common law, including punitive damages, plus attorneys' fees and costs.

5. An award shall be entered granting Meenaxi such other and further relief as this Court deems just and equitable.

Dated: October 31, 2023

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